

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**SHINSHO AMERICAN
CORPORATION**

PLAINTIFF,

VS.

HYQUALITY ALLOYS, LLC

DEFENDANT.

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CIVIL ACTION NO. 4:20-cv-00577

JURY DEMANDED

**DEFENDANT HYQUALITY ALLOYS, LLC’S RESPONSE IN OPPOSITION TO
PLAINTIFF SHINSHO AMERICAN CORPORATION’S EMERGENCY MOTION FOR
CONTEMPT AND REQUEST FOR A SHOW CAUSE HEARING [DKT. 41]**

Defendant HyQuality Alloys, LLC (“HyQuality”) files this Response in Opposition to Plaintiff Shinsho American Corporation’s (“Shinsho”) Emergency Motion for Contempt and Request for a Show Cause Hearing (“Motion for Contempt”) [Dkt. 41], and states as follows:

1. Shinsho upended the status quo. After a year of working together through a depressed steel market ravaged by the COVID-19 pandemic, Shinsho has begun using the Agreed Order Granting Preliminary Injunction (“Agreed PI”) [Dkt. 21] to unfairly compete against HyQuality. As this Court may recall, HyQuality expressed concerns, over a year ago, that Shinsho was using the legal process to seize HyQuality’s business by forcing it into insolvency so it could take its customers [Dkt. 15, at ¶27] – it now appears that Shinsho has made its move.

2. After some growing pains, Shinsho and HyQuality settled into an accepted method for selling steel under the Agreed PI. This relationship, however, has been occasionally

marred by Shinsho's constant demands for information regarding shipments of HyQuality's own steel to its customers¹ and by Shinsho's unfounded suspicions of HyQuality. Despite these issues, the parties have thus far been able to work together to cooperate and resolve their issues. For example, as recently as December 2020, the parties were able to coordinate a week-long physical inventory of Shinsho's "Subject Steel" at the Magnolia that HyQuality was under no obligation to facilitate. This changed in 2021.

3. Upon information and belief, on or about January 2021, Shinsho began a steel-dumping campaign wherein it would sell the same size and grade of steel that HyQuality sells to its customers but at a lower price.² Shinsho knows the identity of HyQuality's customers because, under the Agreed PI, HyQuality is required to provide Shinsho shipping and financial documents for each sale of the "Subject Steel." Shinsho also knows what price to set to undercut HyQuality's prices because, under the Agreed PI, Shinsho has to agree to the "market value" of the steel sold by HyQuality. In essence, the Agreed PI has become a tool – a hammer, if you will – for Shinsho to unfairly compete against HyQuality. Shinsho went so far as to engage Lowell "Tommy" Thomas ("Thomas"), a former HyQuality employee, to market Shinsho's steel in direct competition to HyQuality.³

4. On Friday March 12, 2021, Shinsho's counsel reached out to HyQuality's counsel to confer regarding various shipments dating back to January 2021 that Shinsho claimed was their material but had not received the associated paperwork. HyQuality's counsel raised the issue regarding the steel-dumping scheme and requested assurances that Shinsho would discontinue such practices. Later that Friday, HyQuality represented to Shinsho that, to the extent

¹ HyQuality owns steel inventory separate from the claimed "Subject Steel" in the lawsuit.

² Exhibit A – Declaration of Jason Fowler.

that any prior and unaccounted shipments contained “Subject Steel,” such documents would be produced by Friday March 19, 2021 along with information regarding any payments that may be due or that had been made. HyQuality also requested a list of the shipments identified by Shinsho so HyQuality could more easily and reliably search for those shipments.

5. HyQuality’s counsel followed-up regarding the list of shipments and a response to the steel-dumping allegations later that Friday March 12, 2021 via call, on Saturday March 13, 2021 via email, on Monday March 15, 2021 via call, and on Tuesday March 16, 2021 via call. All to no avail. The list of shipments was not shared with HyQuality until Shinsho attached it to their Motion. Shinsho also never directly responded to the steel-dumping allegations.

6. On Tuesday March 16, 2021 at 4:51 p.m., HyQuality’s counsel sent a detailed email to Shinsho’s counsel seeking to, yet again, confer regarding these issues and to reaffirm HyQuality’s commitment to producing any documentation regarding “Subject Steel” shipments that had not been produced. This email communication is attached hereto as **Exhibit B**. Either out of impatience, or to control the narrative by first presenting HyQuality as the bad actor, Shinsho filed the present Motion later that Tuesday at 7:14 p.m.

7. The very next morning, Thomas blind copied Angela Graziano (“Graziano”), a HyQuality employee in charge of sales, in an email to a HyQuality customer wherein Thomas quoted the current minimum “market value” price allowed by Shinsho under the Agreed PI for the same size and grade of steel that HyQuality sells.⁴ This unsolicited email from Thomas is a tacit admission that Shinsho was using Thomas and the Agreed PI to unfairly compete. Only

³ *Id.*

⁴ *Id.*

Shinsho could have advised him to adjust his pricing to match the latest allowed “market value” price and blind carbon-copy Graziano in the email. The proof is in the timing.

8. HyQuality was hopeful that this “wink-wink” from Thomas meant that Shinsho was going to discontinue its anti-competitive and inequitable tactics. However, HyQuality’s owner, Jason Fowler, spoke with representatives of Holbert Steel, a HyQuality customer, on March 18, 2021 and they confirmed that Thomas had quoted them numerous prices for the same size and grade of steel that HyQuality currently sells but at prices below those of in the approved pricing matrix.

9. Although HyQuality is not currently seeking relief regarding those issues, HyQuality will continue to investigate those issues and engage with Shinsho to avoid, if at all possible, having to seek court intervention.⁵ If appropriate, HyQuality will seek to dissolve the Agreed PI and vigorously pursue its counterclaims and affirmative defenses against Shinsho.

10. Admittedly, the flow of paperwork from HyQuality to Shinsho has been slower than usual as of late. HyQuality has recently seen a significant increase in the steel market that has driven sales to the best levels they have been since the beginning of the pandemic. Shinsho’s steel-dumping scheme also meant that any documentation provided to them would only serve to further upset the status quo by giving Shinsho real-time information to use in undercutting HyQuality with its customers. Regardless, as represented in communications between counsel, HyQuality intends to produce any documentation related to the shipments claimed by Shinsho in the now-produced list by March 19, 2021, and also make all payments when due to Shinsho in accordance with the Agreed PI. Although HyQuality is still going through prior shipments and

⁵ HyQuality hereby preserves and does not waive any claims or causes of action against Shinsho or Thomas that may arise from any anti-competitive acts or disclosure of confidential information as alleged herein.

payment records, at this time HyQuality estimates that Shinsho is due approximately \$64,000.00 for the last three months.⁶

11. In effect, Shinsho's Motion for Contempt is nothing more than a bad faith attempt to set the narrative and cast HyQuality in a bad light considering that the amount of the steel in question is roughly .6% of the \$10,000,000.00 Shinsho claims it is owed or the equivalent of two (2) truckloads of steel. The sky is not falling. Under the terms of the Agreed PI, HyQuality has thirty (30) days to pay for the steel shipped and sold. HyQuality intends to honor those terms – and still has ample time to do so for several of the complained of shipments. Further, Shinsho's continued harassment of truck drivers as they come and go from the yard must stop. As recently as this week, a Shinsho private investigator posing as HyQuality security guard stopped a customer's truck driver and demanded that he be able to inspect the steel loaded on the truck. Not only is this inappropriate, it is likely illegal.

12. The parties have successfully navigated the Agreed PI for over a year. Now that steel prices are beginning to recover, Shinsho is seeking to punish HyQuality both in the marketplace and in the courthouse. Respectfully, Shinsho's anti-competitive behavior must neither be tolerated nor endorsed by this Court. HyQuality requests this Court deny Shinsho's Motion for Contempt or, in the alternative, set this matter for full evidentiary hearing.

PRAYER

Defendant HyQuality Alloys, LLC requests that this Court deny Plaintiff's Emergency Motion for Contempt and Request for a Show Cause Hearing [Dkt. 41] in its entirety, and for such other relief as Defendant may justly be entitled to.

⁶ Exhibit A – Declaration of Jason Fowler.

Respectfully submitted,

By: /s/ Rodney Drinnon
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on the counsel of record via the Court's ECF system on the 18th day of March, 2021:

/s/ Rodney Drinnon
Rodney Drinnon